> [E]ach Member shall accord immediately and unconditionally to services and service suppliers of any other Member treatment no less favourable than that it accords to like services and service suppliers of any other country.[45]

The FCC's proposals would violate the MFN principle in at least two different ways. First, the FCC proposes to establish three different accounting rate benchmark ranges, depending on the economic development category of a particular country.[46] On its face, directing U.S. carriers to pay different rates to carriers in different countries violates the MFN principle.

Second, and of greater concern, is the FCC's proposal to take "enforcement action" against individual carriers that fail to make "meaningful progress" in lowering their accounting rates. The FCC proposes to direct U.S. carriers to breach their effective operating agreements with those carriers, and to make settlements payments at an accounting rate specified by the agency. The degree and duration of the rate reduction would be within the FCC's unfettered discretion. The FCC goes so far as to reserve the right to order U.S. carriers to withhold all settlements payments from a foreign carrier.[47]

The FCC provides no standards or objective criteria as to when it would take retaliatory action. Rather, the Notice employs vague phrases such as the lack of "meaningful" or "adequate" progress.[48] This approach would give the FCC unbridled discretion to retaliate against one country but not against another country, or to impose different punishments on the two

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45 Final Act, General Agreement on Trade in Services, art. II, 33 I.L.M. at 1169.

46 See Notice ¶¶ 47-48.

47 See id. at ¶ 90 n.84 (citing Telintar Order).

48 Id. at ¶ 87.

countries, even if the carriers in both countries had equivalent accounting rates or identical negotiating postures. That such arbitrary retaliation would constitute illegal discrimination under MFN is widely recognized, both by the U.S. Government[49] and in the academic world. For example, a 1993 Harvard University law review article argues that unilateral retaliation violates MFN because it encourages arbitrary treatment by rich and powerful developed countries:

> "Unilateral" retaliation by developed states further undermines "multilateral" trade treatment embodied in the GATT. . . . The process of unilaterally singling out states that do not meet a vaguely defined U.S. standard . . . implicitly contradicts the principle of non-discrimination and brings an element of discretion to trade relations that creates the potential for abuse by the developed state.[50]

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49 See, e.g., Office of International Sector Policy, U.S. Department of Commerce, An Examination of the Adequacy of U.S. Trade Laws as They Affect the Competitiveness of High Technology Industries 33 (1983) (discussing the inconsistency between the MFN principle of nondiscrimination and the discretion of the U.S. Trade Representative to retaliate pursuant to 19 U.S.C. § 2411(c)).

50 George Y. Gonzalez, Symposium on the North American Free Trade Agreement: An Analysis of the Legal Implications of the Intellectual Property Provisions of the North American Free Trade Agreement, 34 Harv. Int'l L.J. 305, 314 (1993); see also Aubry D. Smith, Bringing Down Private Trade Barriers -- An Assessment of the United States' Unilateral Options: Section 301 of the 1974 Trade Act and Extraterritorial Application of U.S. Antitrust Law, 16 Mich. J. Int'l L. 241, 282-84 (1994) ("[T]he U.S. adherence to the most favored nation principle (MFN) in areas covered by agreements undertaken within the framework of the World Trade Organization substantially reduces the capacity for U.S. retaliation."); Frank J. Schweitzer, Flash of the Titans: A Picture of Section 301 in the Dispute Between Kodak and Fuji and a View Toward Dismantling Anticompetitive Practices in the Japanese Distribution System, 11 Am. U.J. Int'l L. & Pol'y 847, 872-73 (1996) ("Serious international legal considerations . . . constrain unilateral action by the United States taken outside of the WTO scheme, to redress private trade barriers. The "most-favored nation" principle, a central element of GATT law, persists as a particular concern."); Judith H. Bello & Alan F. Holmer, U.S. Trade Law and Policy Series No. 21, GATT Dispute Settlement Agreement: Internationalization or Elimination of Section 301?, 26 Int'l Law. 795, 800 (1992) (U.S. retaliation likely violates the MFN provision of the GATT).

Chairman Hundt previously has acknowledged that an MFN provision would preclude the type of unilateral retaliation proposed in the Notice. In an October 1996 speech, the Chairman stated that the United States does not want to include a pure MFN provision in the GBT agreement because it would prohibit the FCC from "tell[ing] our carriers to collude against any unruly monopolist."[51] Yet, that is exactly what the FCC now proposes to do.

National Treatment. The principle of National Treatment requires that the FCC treat carriers from other countries no less favorably than it treats U.S. carriers. For example, the National Treatment provision of GATS states, in part:

> [E]ach Member shall accord to services and service suppliers of any other Member, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.[52]

In the Notice, the FCC proposes to base its benchmark accounting rates on a long-run incremental cost methodology.[53] The U.S. Court of Appeals for the Eighth Circuit is currently considering whether the use of such a methodology to establish the price that U.S. carriers must charge other U.S. carriers for local interconnection violates the U.S. Constitution's takings clause because it does not allow carriers to recover their historical, embedded costs.[54] If

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51 Hundt Speech at 7.

52 Final Act, General Agreement on Trade in Services, Art. XVII, 33 I.L.M. at 1180.

53 See Notice ¶¶ 31-32.

54 See Iowa Utilities Board v. FCC, Order Granting Stay Pending Judicial Review, 1996-2 Trade Cas. (CCH) ¶ 71,598, 172 P.U.R.4th 645 (8th Cir. Oct. 15, 1996); see also, Illinois Bell Telephone Co. v. FCC, 988 F.2d 1254, 1260 (D.C. Cir. 1993) (By long

(continued...)

the U.S. Constitution forbids the FCC from requiring U.S. carriers to accept payment at incremental cost-based rates, then any effort to require non-U.S. carriers to accept payment based on that cost methodology would violate the National Treatment principle.

Even if the use of long-run incremental costs is found to be permissible, the proposal contained in the Notice would still violate National Treatment because, under certain circumstances, it would permit the FCC to direct U.S. carriers to settle with foreign carriers at rates below incremental cost, or even to withhold settlements payments altogether. Under the U.S. Constitution, the FCC plainly could not deprive a U.S. carrier of all compensation. To deprive non-U.S. carriers of all compensation, therefore, would unequivocally violate the National Treatment principle.[55]

E. The FCC's Proposals Would Violate United States' Bilateral Treaty Obligations

The FCC's ability to impose accounting rates on foreign carriers also is constrained by the United States' bilateral treaty obligations. For example, the U.S. has entered into a "Treaty With Argentina Concerning the Reciprocal Encouragement and Protection of Investment."

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[54] (...continued)
standing usage in the field of rate regulation, the 'lowest reasonable rate' is one which is not confiscatory in the constitutional sense."); FPC v. Natural Gas Pipeline Co., 315 U.S. 575, 585 (1942); Duquesne Light Co. v. Barasch, 488 U.S. 299, 310 (1989); FPC v. Hope Natural Gas Co., 320 U.S. 591, 603 (1944).

[55] If basic telephony were to become subject to the general trade disciplines embodied in the General Agreement on Trade in Services, the FCC's proposal also would violate Article XI of that Agreement, which provides that "a Member shall not apply restrictions on international transfers and payments for current transactions related to its specific commitments."

Article V of the Treaty requires that "all payments made under a contract" shall "be made freely and without delay into and out of its territory."[56] The Treaty is expressly applicable to "service contracts" between nationals of the two countries.[57] The United States has entered into similar treaties with other countries.

An accounting rate agreement is a contract between two parties that have agreed to provide a service -- the termination of inbound international traffic -- in return for the other party providing "payments" through the settlements process. Treaties such as the Argentina-U.S. Investment Treaty preclude the FCC from adopting any order that would direct a U.S. carrier to withhold settlements payments due under their accounting rate agreements.

III. THE FCC'S PROPOSALS EXCEED ITS AUTHORITY UNDER U.S. LAW

As an administrative agency, the FCC may only exercise those powers vested in it by Congress.[58] The Notice makes no attempt to explain how the FCC has the statutory authority to establish international accounting rates and order U.S. carriers to breach their existing accounting rate agreements. Rather, it merely asserts that Sections 1, 4(i), 201-205 and 303(r) of the Communications Act allow the agency "to take the steps described in this Notice."[59]

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56 Treaty With Argentina Concerning the Reciprocal Encouragement and Protection of Investment, Nov. 14, 1991, U.S.-Argentina, art. V § 1, S. Treaty Doc. No. 103-2.

57 Id. at Art. I.

58 See Louisiana Public Service Comm'n v. FCC, 476 U.S. 355, 374 (1986) ("[A]n agency literally has no power to act. . . unless and until Congress confers power upon it.").

59 See Notice ¶ 19.

Naked assertions cannot compensate for the absence of reasoned analysis. Although the Communications Act grants the FCC authority to ensure that the rates that U.S. carriers charge their U.S. customers for international telecommunications services are just and reasonable, it does not follow that the FCC can take any action that it believes will result in lower international telephone rates for U.S. consumers.[60] To the contrary, as demonstrated below, nothing in the Communications Act authorizes the FCC to prescribe international accounting rates or to require U.S. carriers to breach the terms of accounting rate agreements.

Section 1. Section 1 of the Communications Act[61] is not an independent grant of authority.[62] Rather, the courts have concluded that this provision provides the FCC with some latitude to take actions that are "ancillary" to the grants of authority contained elsewhere in the Act.[63] Nonetheless, neither the FCC nor any court has ever suggested that the FCC could use its

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60 Compare Railway Labor Exec. Ass'n v. National Mediation Bd., 29 F.3d 655, 670-71 (D.C. Cir. 1994), cert. denied sub nom. Burlington Northern Railroad Co. v. Railway Labor Exec. Ass'n, 115 S.Ct. 1392 (1995) ("[The Agency's] position in this case amounts to the bare suggestion that it possesses plenary authority to act within a given area simply because Congress has endowed it with some authority to act in that area. We categorically reject that suggestion." (emphasis in original)).

61 47 U.S.C. § 151.

62 See People of the State of California v. FCC, 905 F.2d 1217, 1240-41 n.35 (9th Cir. 1990) ("California v. FCC") ("Title I is not an independent source of regulatory authority; rather, it confers on the FCC only such power as is ancillary to the Commission's specific statutory responsibilities.").

63 See, e.g., United States v. Southwestern Cable Co., 392 U.S. 157, 178 (1968) (FCC's Title I power "restricted to that reasonably ancillary to the effective performance of the Commission's various responsibilities").

Title I authority to regulate the prices, terms, and conditions under which a U.S. carrier obtains goods or services from its suppliers.

Sections 4(i) and 303(r). Sections 4(i) and 303(r) allow the FCC to take those actions "not inconsistent with this Act, as may be necessary in the execution of its functions."[64] Although these provisions have been construed broadly, U.S. courts have emphasized that the FCC's authority under these provisions is not infinitely elastic.[65] The Supreme Court has specifically ruled that Section 303(r) does not give the FCC authority to direct an entity subject to its jurisdiction to breach a contractual agreement that it has entered into with a third party.[66]

Section 201(a). Section 201(a) grants the FCC authority to require carriers to "establish through routes" with other carriers and to set the "charges applicable thereto and the divisions" thereof.[67] This provision, however, is clearly directed towards interconnection agreements among domestic carriers subject to the FCC's jurisdiction. Indeed, the FCC has never

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64 47 U.S.C. § 154(i); 47 U.S.C. § 303(r). Section 303(r) applies only to radio stations, and thus is not applicable to landline interconnection arrangements between U.S. and foreign carriers.

65 See California v. FCC, 905 F.2d at 1240-41 n.35 ("The system of dual regulation established by Congress cannot be evaded by the talismanic invocation of the Commission's Title I authority."); American Telephone & Telegraph Co. v. FCC, 487 F.2d 865, 880 (2d Cir. 1973) (Section 4(i) does not authorize the FCC to circumvent the tariff filing procedures of Section 203); GTE Service Corp. v. FCC, 474 F.2d 724, 732-36 (2d Cir. 1973); Turner v. FCC, 514 F.2d 1354, 1356 (D.C. Cir. 1975).

66 See supra note 20.

67 47 U.S.C. § 201(a).

invoked Section 201 to establish the division of rates between a U.S. carrier and its foreign correspondent.

Section 201(b). Section 201(b) requires common carriers subject to the FCC's jurisdiction to provide communications services at rates that are "just and reasonable."[68] This provision authorizes the FCC to oversee the rates at which these carriers provide international telecommunications services to their domestic customers. Section 201(b), however, in no way authorizes the FCC to regulate the terms pursuant to which U.S. carriers do business with their foreign suppliers.

Section 201(b) also permits U.S. carriers to enter into a contract "for the exchange of services" with a "common carrier not subject to this Act" if the Commission finds it to be in the public interest. This provision, however, does not grant the Commission authority to alter the terms of those agreements. Even if Section 201(b) did give the Commission authority to alter domestic contracts, however, it would not authorize the agency to exercise that authority in connection with international accounting rate agreements. The legislative history makes clear that the term "common carriers not subject to this Act" refers to agreements with the "independent telephone companies."[69] The FCC has, therefore, consistently applied Section 201(b) to agreements with U.S. carriers that operate on a purely intrastate basis.[70] Moreover, the

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68 47 U.S.C. § 201(b).

69 See H.R. Rep. No. 1850, 73d Cong., 2d Sess. 4 (1934) (Section 201(b) applies to "independent telephone companies engaged in interstate or foreign commerce.").

70 See, e.g., Western Union Telegraph Co.: New Telex Service Arrangements Via Mexico (continued...)

Commission has expressly stated that the "plain meaning" of the term "exchange of services" in Section 201(b) is a "barter arrangement or provision of one service in exchange for another service."[71] Thus, this provision does not apply to contractual relations, such as those at issue here, in which one carrier compensates another carrier for carrying its traffic in order to complete international calls.

Sections 203 and 204. Section 203 requires U.S. carriers to provide service to their U.S. customers pursuant to tariffs filed with the FCC, while Section 204 governs the procedures for FCC review of tariffs filed pursuant to Section 203. These provisions govern the rates U.S. carriers charge their domestic customers; in no way do they authorize the Commission to regulate the terms pursuant to which U.S. carriers do business with their foreign suppliers.

Section 205. Finally, Section 205 authorizes the Commission, following a hearing, to "prescribe" rates.[72] Here, again, the Commission's authority is limited to prescribing the rates that domestic carriers subject to its jurisdiction may charge to their customers. Nothing in the Act suggests this provision allows the Commission to determine the prices that a U.S. carrier charges

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[70](...continued)
and Canada, 75 F.C.C.2d 461, 477 n.12 (1979), vacated on other grounds sub nom. ITT World Communications v. FCC, 635 F.2d 32 (2nd Cir. 1980) (interconnection agreement between Western Union and foreign carriers not covered by Section 201(b)).

[71] Id. at 477 n.12 (1979); see also id. at 479 (Attachment A) ("The proviso, taken from the Interstate Commerce Act, was designed to legitimize long-standing arrangements between telegraph carriers and railroads whereby they supplied free services to each other in the conduct of their respective business.").

[72] 47 U.S.C. § 205.

its foreign supplier. Moreover, Section 205 contains detailed procedural requirements governing prescriptions: they must follow a hearing and must be based on a Commission finding that the prescribed rate is just and reasonable. The FCC has not proposed to afford either of these procedural protections before it prescribes accounting rates. As the D.C. Circuit has recognized, to "permit the Commission to achieve the same result as it would pursuant to a Section 205 rate prescription, by circumventing the statutory hearing and finding requirements on the basis of its claimed broad inherent regulatory power, would defeat the purpose of Section 205 and vitiate the specific statutory scheme."[73]

Caselaw. The only case cited by the FCC, the 1942 district court decision in RCA Communications v. United States,[74] does not support the proposition that the FCC may order a U.S. carrier to breach the terms of its accounting rate agreements with its foreign correspondents and settle traffic at FCC-specified rates. To the contrary, the court in RCA expressly recognized that any change in accounting rates could occur only through bilateral agreements.

The FCC order at issue in RCA directed a U.S. carrier to file tariffs that reduced the rate that it charged its domestic customers for a category of international communications service. As the court noted, the U.S. carrier had the option of seeking to enter into "new agreements" that would lower the rate that it paid its foreign correspondent, thereby allowing it to comply with the FCC order while not operating at a loss. However, the court expressly stated that any such agreement would require "the consent of the company or administration which

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73 AT&T v. FCC, 487 F.2d 865, 874-75 (2d Cir. 1973).

74 43 F. Supp. 851 (S.D.N.Y. 1942).

operates the other end of the jointly operated circuit, subject to the consent of its government."[75] The FCC could not unilaterally impose the new rate on the foreign correspondent.

In light of the above, it is clear that neither the provisions of the Communications Act nor the case law cited in the Notice authorize the FCC to establish accounting rates or order U.S. carriers to breach the terms of their accounting rate agreements. In the absence of such authority, the FCC may not adopt the proposals set forth in the Notice.

IV. THE EXPERIENCE IN ARGENTINA DEMONSTRATES THE SHORT-COMINGS IN THE FCC'S PROPOSED APPROACH

Like the FCC, Telintar believes that accounting rates should be cost-oriented, as provided for in Recommendation D.140. As explained below, however, the experience in Argentina demonstrates that the FCC's policies have made accounting rate reform more difficult. The proposals contained in the Notice, moreover, would compound the problem.

A. Telintar is Committed to Cost-Oriented Accounting Rates

The Government of Argentina has been committed to the liberalization of the telecommunications sector since 1979. As part of this process, Argentina's state-owned monopoly telecommunications carrier, Empresa Nacional de Telecomunicaciones, was privatized in 1990. Telintar is now responsible for the provision of international telecommunications service in

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[75] RCA, 43 F. Supp. at 853.

Argentina.[76] Pursuant to the privatization plan, Telintar will become subject to competition in this market no later than the year 2001.

As part of the privatization agreement, Telintar's shareholders agreed to make significant investments in upgrading the telecommunications infrastructure, and to take significant actions to advance universal service. The privatization agreement expressly provided that revenue from international services (including international settlements payments) are to be used for these purposes.

In the years since privatization, Argentina has made significant progress in its efforts to develop the telecommunications infrastructure. According to one observer, the privatized companies have:

> installed a substantial number of new lines, increased telephone density, expanded the level of network digitalization, almost doubled the call completion rate, introduced new services, and generally reduced the waiting time for new customers.[77]

During the last year, Telintar and its parent companies have taken concrete action to lower accounting rates. This has involved two distinct actions.

Tariff rebalancing. Telintar's previous tariffs were adopted prior to privatization, and contained significant pricing distortions. The growth of call-back made it essential for

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76 Under the privatization plan, Argentina was divided into two regions. The local service franchise for the southern half of the country was awarded to Telefónica de Argentina (a consortium headed by Telefónica de Espana); the franchise for the northern half of the country was awarded to Telecom Argentina (a consortium headed by France Telecom and STET Italia). Telefónica de Argentina and Telecom Argentina jointly own Telintar.

77 D. Forbes-Jamieson, "Argentina: The Commercial and Regulatory Environment," DATAPRO Reports on International Telecommunications, IT10-055-301.

Telintar to obtain government approval to reduce international tariffs before lowering accounting rates. Telintar's accounting rate with the United States is lower than its accounting rate with any other country. In the absence of tariff reductions, any reduction in accounting rates simply would have increased the ability of call-back operators based in the United States to offer services at prices that are significantly lower than those that Telintar can lawfully charge.

Telintar is pleased to note that it has been granted permission by the Argentine Government to fundamentally rebalance its existing tariffs effective February 1, 1997. This will result in substantial reductions in charges for outbound international calls, which will be offset through increases on a range of domestic charges.[78] Once fully effective, these reductions will make it possible to further reduce accounting rates.

Accounting rate reductions. Although Telintar's ability to lower accounting rates prior to tariff rebalancing was limited, it has taken significant steps in the process of moving these rates closer to cost. Since 1992, the Argentina-U.S. accounting rate has been reduced on three separate occasions. As a result, the mutually accepted accounting rate has fallen by nearly 20 percent. In addition, Telintar has committed, in writing, to substantial additional accounting rate reductions once the tariff rebalancing is fully effective.

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[78] As in the United States, the rebalancing order is subject to administrative and judicial review.

B. The FCC's Policies Have Worsened the Argentina-U.S. Settlements Deficit

FCC policies have exacerbated the traffic imbalance between the United States and Argentina. These policies include the FCC's promotion of traffic-distorting alternate calling arrangements, the agency's rejection of bilateral agreements that would result in lower accounting rates, and its encouragement of AT&T's refusal to accept non-discriminatory rate reductions. The adverse effects of each of these policies is described below.

Call-back. The FCC's active promotion of "alternate" calling arrangements -- such as call-back, third country calling, and call re-origination -- has significantly increased the United States' settlements deficit with Argentina. Since 1993, when these practices began to become widespread, the traffic imbalance between Argentina and the United States has increased markedly. While outbound international traffic from Argentina to the United States remained fairly constant, the traffic from the United States to Argentina (measured in minutes of use) grew by 83.6 percent between 1993 and 1995. In contrast, traffic from the rest of the world to Argentina grew by only 29.2 percent. As a result, today more than half of all international calls to Argentina are from the United States, compared to about one third just five years ago.[79]

Two factors explain the disproportionate growth in calls from the United States to Argentina. The first is the fact that carriers in the United States enjoy lower accounting rates with Argentina than do carriers in any other country. These low rates, in combination with the FCC's approval of alternate calling arrangements, have resulted in the disproportionate increase in outbound traffic from the United States to Argentina.

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79 See Chart Two, attached.

Refusal to approve accounting rate reductions. The FCC also has contributed to the Argentina-U.S. settlements deficit by refusing to approve agreements between Telintar and its U.S. correspondents that would immediately lower accounting rates. Telintar has recently entered into accounting rate agreements with MCI, Sprint, and WorldCom. These agreements provide for immediate reductions in accounting rates, and commit Telintar to further reductions once the Argentine Government's tariff rebalancing order is fully effective. Much to Telintar's regret, the FCC's International Bureau has "suspended" these agreements.

Encouragement of AT&T's refusal to accept non-discriminatory rate reductions. The FCC's policies also have exacerbated the Argentina-U.S. settlements deficit by encouraging AT&T's refusal to accept the same accounting rate reductions as the other U.S. carriers. In the absence of a new accounting rate agreement, Telintar would be well within its rights to terminate its commercial relationship with AT&T. AT&T has been willing to run this risk because it believes that, if Telintar were to terminate service to AT&T, the FCC would -- as it did in March 1996 -- force all U.S. carriers to engage in a group boycott of Telintar.

C. Adoption of the Policies Proposed in the Notice Would Worsen the Situation

The proposals contained in the Notice would not reduce the existing settlements deficit between Argentina and the United States. To the contrary, these proposals would make it more difficult to lower the existing accounting rate.

As explained above, approval of Telintar's tariff rebalancing proposal was an essential pre-requisite to accounting rate reductions. This process, however, has required that significant costs be shifted to domestic users. As a result, generating the political support within Argentina for rebalancing has been a very difficult task.[80] The high-handed approach adopted by the FCC in this proceeding has not made that task any easier.

Now that it has received approval to rebalance its tariffs, Telintar is in a position to enter into further negotiations with its foreign correspondents regarding accounting rate levels. These negotiations will require compromise. If the FCC adopts the rigid approach proposed in the Notice, however, U.S. carriers will not be able to make necessary compromises; they will merely be able to inform Telintar of the rate that the FCC has prescribed. The end-result will be to make mutual agreement difficult, if not impossible.

Ultimately, further accounting rate reductions require the re-establishment of the mutual trust between Telintar and its U.S. correspondents. The proposals set out in the Notice, however, would do just the opposite. If implemented, Telintar would be faced with the risk that -- at any time -- the FCC might decide that it was not "making meaningful progress toward complying with [the agency's] benchmarks," and order U.S. carriers to breach their operating agreements and settle traffic at an FCC-specified rate.[81]

Telintar cannot maintain effective commercial relations with its U.S. correspondents if it cannot assume that they will scrupulously comply with the terms of the agreements into which they have entered. The operating agreements between Telintar and its U.S. correspondents contain provisions specifying the contractual remedies that either party may take

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[80] Telintar is grateful to Chairman Hundt for his letter to the Argentine Government, in which he expressed support for Telintar's rate rebalancing proposal.

[81] Notice ¶ 88.

in the event of breach. These agreements provide that the injured party may unindirectionalize a portion of the international circuits and, in appropriate cases, may terminate commercial relations. Should the FCC direct U.S. carriers to settle traffic at a rate other than that specified in their existing accounting rate agreements, Telintar reserves the right to exercise any or all of its contractual remedies. Telintar also is prepared to seek the intervention of the ITU and other multi-lateral organizations.

CONCLUSION

Telintar, like most carriers throughout the world, shares the FCC's desire to move toward cost-oriented accounting rates. However, Telintar will not be dictated to by the FCC, which lacks the authority to impose its policies on carriers outside the United States. The tactics that the FCC proposes to use, moreover, would violate both international and U.S. law.[82]

Telintar urges the FCC to take actions that would promote -- rather than impede -- the bilateral negotiations that are the only means to lower accounting rates. The FCC can best do so by ensuring that U.S. carriers comply with the terms of their existing agreements and negotiate with their foreign correspondents in good faith. If the FCC departs from this path --

[82] Telintar anticipates that countries and carriers throughout the world will express strong opposition to the FCC's proposals. Telintar urges the FCC to make these comments available to interested parties outside of the United States by promptly posting them on the Internet. Telintar further urges the FCC to provide a comprehensive description of these comments in its forthcoming order.

and, in particular, if it directs U.S. carriers to breach the terms of their agreements -- it must assume that non-U.S. carriers, such as Telintar, will exercise all lawful remedies at their disposal.

Respectfully submitted,

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February 7, 1997

CHART ONE

THREE PHASES OF GROWTH
IN THE U.S. TRAFFIC IMBALANCE

YEAR	TRAFFIC EXITING THE U.S. (BILLION MINUTES)	TRAFFIC ENTERING THE U.S. (BILLION MINUTES)	TRAFFIC IMBALANCE RATIO	AVERAGE ANNUAL GROWTH IN IMBALANCE
1985	3.4	2.4	1.42	
1986	4.1	2.5	1.64	10.2%
1987	4.8	2.8	1.72	
1988	5.7	3.2	1.78	
1989	6.8	3.8	1.79	
1990	8.0	4.3	1.86	2.5%
1991	9.0	4.7	1.91	
1992	10.2	5.2	1.96	
1993	11.4	5.7	2.00	
1994	13.4	6.2	2.16	5.25%
1995	15.8	7.1	2.23	

Source: U. S. Federal Communications Commission

CHART TWO

GROWTH IN TRAFFIC TO ARGENTINA

YEAR	U.S. TO ARGENTINA		REST OF THE WORLD TO ARGENTINA	
	MINUTES	PERCENT INCREASE	MINUTES	PERCENT INCREASE
1990	46,077,894	-	90,089,516	-
1991	52,914,837	15%	104,362,406	16%
1992	63,389,396	20%	119,593,552	15%
1993	80,748,956	27%	131,260,681	10%
1994	104,808,892	30%	146,946,977	12%
1995	148,223,969	41%	169,697,482	15%
1996	207,340,646	40%	196,185,585	16%

CERTIFICATE OF SERVICE

I, James M. Fink, do hereby certify that on this 7th day of February, 1997, I have caused a copy of the foregoing "Comments of Telecomunicaciones Internacionales de Argentina Telintar S.A." in IB Docket No. 96-261 to be served by hand to the persons listed below.

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